

# Court examines validity of lawyer's sworn affidavit provided on behalf of clients as part of interim application



13 August 2019 | Contributed by Elias Neocleous & Co LLC

Litigation, Cyprus

## 📌 Facts

## 📌 Decision

The Larnaca District Court recently issued a decision on the validity of a sworn affidavit by a lawyer on behalf of his clients in the context of an interim application based on Articles 82 to 90, 91C, 91E and 91Z of the Civil Procedure Law (Chapter 6 in CPR 48, D 1 to 3 and 9 of the Civil Procedure Rules).

### Facts

The plaintiff filed an objection against the interim application which argued that "the Affiant who swore the Affidavit accompanying the application had not been authorised by the Applicants and/or is prevented from making the Affidavit as there is a conflict of interest".

Further, the objection made the following claim:

*On the basis of legal advice which the affiant received before swearing the Affidavit, he was told that he could not make the affidavit as he had not been authorized by the Defendants and there was no reason why the Applicants could not have made the affidavit supporting their application themselves.*

With regard to the plaintiff's objection, the court stated as follows:

*Case law has repeatedly highlighted the undesirable practice of lawyers writing and swearing affidavits and in such cases, if there is no obvious reason, an explanation should be given as to why the lawyer is the affiant rather than the party or other person involved in the case.*

In the context of sworn affidavits by lawyers, the court in *Dmitry Rybolovlev v Elena Rybolovlev*(**1**) emphasised the following point:

*The issue of swearing and submitting to Court proceedings a sworn affidavit by a lawyer is governed by well-established principles emerging from case law. If we need to summarize them again, we would say that generally speaking, a sworn affidavit is not prohibited simply because the affiant is a lawyer. Lawyers, however, should distance themselves from the facts relating to the issues at stake and it is generally undesirable that they appear as witnesses or attorneys in court proceedings in which they represent a party unless necessary. But once a lawyer has in one way or another become a witness of events, they are prevented, due to incompatibility, from continuing to deal with their client's case as a lawyer.(**2**)*

### Decision

Based on the above case law, the Larnaca District Court stated as follows:

*In the above well-established principles, we do not consider it appropriate to add or recognize another principle according to which if the affiant is a lawyer and does not adequately explain why they have made an affidavit rather than their client, then the affidavit should be ignored or rejected.*

*With this in mind, we can accept as a principle of case law regarding the issue of why the affiant is a lawyer and not a party or another person, that some explanation for this is required where there is no apparent good reason in the circumstances, such as the residence of the party in the Action is abroad and/or other inherent difficulties which would not allow the person to be acting unconditionally.*

Therefore, in spite of being an undesirable practice, case law does not prohibit affidavits made by lawyers in cases such as the one under review, where it appears that the affiant-lawyer is not personally involved in the relevant application and case. However, the court must be provided with an explanation as to why it was not possible for the relevant defendant or claimant (as the case may be) to personally swear the relevant affidavit.

Thus, according to the relevant case law, the prohibition on lawyers providing sworn affidavits in court proceedings concerns lawyers who are or will be witnesses in the relevant case or who represent clients in the relevant case.**(3)**

As a result, the court rejected the claimant's objection for being invalid.

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## Endnotes

(1) (2010) 1 AAD 82.

(2) *Ahapittas v Roc-Chic Ltd* (1968) 1 CLR 1, In *Ephthymiou* (1987) 1 CLR 319, *Thanos Hotels Ltd v Ioannou* (1991) 1 ID 1036.

(3) *Investylia Public Company Ltd v Józef Gavriilidou*, Political Appeal 326/10, 13 June 2013.

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